

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

6 THOMAS FLOYD HANLEY, III,)
7 Plaintiff,) No. CV-08-00268-JPH
8 v.)
9 MICHAEL J. ASTRUE, Commissioner) ORDER GRANTING DEFENDANT'S
10 of Social Security,) MOTION FOR SUMMARY JUDGMENT
11 Defendant.)
12)

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on March 27, 2009. (Ct. Rec. 13, 16). Attorney Jeffrey Schwab represents Plaintiff; Special Assistant United States Attorney Leisa A. Wolf represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.) After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 16) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 13.).

JURISDICTION

Plaintiff filed an application for disability insurance benefits (DIB) on June 22, 2006, and an application for supplemental security income (SSI) on June 29, 2006. Both applications allege onset as of April 29, 2006. (Tr. 87.) The

1 applications were denied initially and on reconsideration. (Tr.
2 57-60, 64-67.)

3 At a hearing before Administrative Law Judge (ALJ), Richard
4 A. Say on October 5, 2007, plaintiff, represented by counsel, and
5 vocational expert Dennis Elliot testified. (Tr. 27-50.) On
6 January 18, 2008, the ALJ issued an unfavorable decision. (Tr.
7 10-24.) The Appeals Council denied a request for review on July
8 15, 2008. (Tr. 1-4.) Therefore, the ALJ's decision became the
9 final decision of the Commissioner, which is appealable to the
10 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed
11 this action for judicial review pursuant to 42 U.S.C. § 405(g) on
12 August 28, 2008. (Ct. Rec. 2, 4.)

13 **STATEMENT OF FACTS**

14 The facts have been presented in the administrative hearing
15 transcripts, the ALJ's decision, the briefs of both Plaintiff and
16 the Commissioner, and are summarized here.

17 Plaintiff was 42 years old at the time of the ALJ's decision.
18 (Tr. 28, 424.) He has a high school education. (Tr. 93.)
19 Plaintiff has past work as a tire salesman and manager, and as a
20 card dealer. (Tr. 45, 88.) He initially alleged disability onset
21 as of April 29, 2006, due to staph infection in both feet and
22 nerve damage in his left foot. (Tr. 87.) Later plaintiff alleged
23 disability primarily due to Crohn's disease and chronic cervical
24 disc disease. (Tr. 146, 269.)

25 ///

26 **SEQUENTIAL EVALUATION PROCESS**

27 The Social Security Act (the "Act") defines "disability"
28 as the "inability to engage in any substantial gainful activity by

1 reason of any medically determinable physical or mental impairment
2 which can be expected to result in death or which has lasted or
3 can be expected to last for a continuous period of not less than
4 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
5 Act also provides that a Plaintiff shall be determined to be under
6 a disability only if any impairments are of such severity that a
7 plaintiff is not only unable to do previous work but cannot,
8 considering plaintiff's age, education and work experiences,
9 engage in any other substantial gainful work which exists in the
10 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
11 Thus, the definition of disability consists of both medical and
12 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
13 (9th Cir. 2001).

14 The Commissioner has established a five-step sequential
15 evaluation process for determining whether a person is disabled.
16 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
17 is engaged in substantial gainful activities. If so, benefits are
18 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If
19 not, the decision maker proceeds to step two, which determines
20 whether plaintiff has a medically severe impairment or combination
21 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
22 416.920(a)(4)(ii).

23 If plaintiff does not have a severe impairment or combination
24 of impairments, the disability claim is denied. If the impairment
25 is severe, the evaluation proceeds to the third step, which
26 compares plaintiff's impairment with a number of listed
27 impairments acknowledged by the Commissioner to be so severe as to
28 preclude substantial gainful activity. 20 C.F.R. §§

1 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P
2 App. 1. If the impairment meets or equals one of the listed
3 impairments, plaintiff is conclusively presumed to be disabled.
4 If the impairment is not one conclusively presumed to be
5 disabling, the evaluation proceeds to the fourth step, which
6 determines whether the impairment prevents plaintiff from
7 performing work which was performed in the past. If a plaintiff
8 is able to perform previous work, that Plaintiff is deemed not
9 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
10 At this step, plaintiff's residual functional capacity ("RFC")
11 assessment is considered. If plaintiff cannot perform this work,
12 the fifth and final step in the process determines whether
13 plaintiff is able to perform other work in the national economy in
14 view of plaintiff's residual functional capacity, age, education
15 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
16 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

17 The initial burden of proof rests upon plaintiff to establish
18 a *prima facie* case of entitlement to disability benefits.

19 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
20 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
21 met once plaintiff establishes that a physical or mental
22 impairment prevents the performance of previous work. The burden
23 then shifts, at step five, to the Commissioner to show that (1)
24 plaintiff can perform other substantial gainful activity and (2) a
25 "significant number of jobs exist in the national economy" which
26 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
27 Cir. 1984).

28 **STANDARD OF REVIEW**

ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

1 Congress has provided a limited scope of judicial review of a
2 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
3 the Commissioner's decision, made through an ALJ, when the
4 determination is not based on legal error and is supported by
5 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
6 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
7 1999). "The [Commissioner's] determination that a plaintiff is
8 not disabled will be upheld if the findings of fact are supported
9 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
10 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
11 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
12 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance.
13 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
14 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
15 573, 576 (9th Cir. 1988). Substantial evidence "means such
16 evidence as a reasonable mind might accept as adequate to support
17 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
18 (citations omitted). "[S]uch inferences and conclusions as the
19 [Commissioner] may reasonably draw from the evidence" will also be
20 upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965).
21 On review, the Court considers the record as a whole, not just the
22 evidence supporting the decision of the Commissioner. *Weetman v.*
23 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
24 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

25 It is the role of the trier of fact, not this Court, to
26 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
27 evidence supports more than one rational interpretation, the Court
28 may not substitute its judgment for that of the Commissioner.

1 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
2 (9th Cir. 1984). Nevertheless, a decision supported by
3 substantial evidence will still be set aside if the proper legal
4 standards were not applied in weighing the evidence and making the
5 decision. *Brawner v. Secretary of Health and Human Services*, 839
6 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
7 evidence to support the administrative findings, or if there is
8 conflicting evidence that will support a finding of either
9 disability or nondisability, the finding of the Commissioner is
10 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
11 1987).

12 **ALJ'S FINDINGS**

13 At the outset, the ALJ found plaintiff met the DIB
14 requirements through December 31, 2007. (Tr. 10, 12.) The ALJ
15 found at step one that although plaintiff earned some income after
16 onset, he has not engaged in substantial gainful activity. (Tr.
17 12, 111, 115.) At steps two and three, the ALJ found that
18 plaintiff suffers from recurrent cellulitis and abscesses of the
19 lower extremities, Crohn's disease, and degenerative disc disease
20 of the cervical spine, status post-fusions, impairments that are
21 severe but which do not alone or in combination meet or medically
22 equal a Listing impairment. (Tr. 12, 15.) The ALJ found
23 plaintiff less than completely credible. (Tr. 19-23.) At step
24 four, relying on the VE, the ALJ found plaintiff's RFC for a range
25 of sedentary work enables him to perform his past relevant work as
a card dealer. (Tr. 23.) Because step four was determinative, the
27 ALJ was not required to proceed to step five. Accordingly, the
28 ALJ found that plaintiff is not disabled as defined by the Social

1 Security Act. (Tr. 24.)

2 ISSUES

3 Plaintiff contends that the Commissioner erred as a matter of
 4 law by failing to properly weigh the medical evidence and by
 5 finding at step four that plaintiff is able to perform his past
 6 relevant work as a card dealer. (Ct. Rec. 14 at 4-9.) The
 7 Commissioner responds that the ALJ appropriately weighed the
 8 evidence and asks the Court to affirm his decision. (Ct. Rec. 17
 9 at 17).

10 DISCUSSION

11 A. Weighing medical evidence

12 In social security proceedings, the claimant must prove the
 13 existence of a physical or mental impairment by providing medical
 14 evidence consisting of signs, symptoms, and laboratory findings;
 15 the claimant's own statement of symptoms alone will not suffice.
 16 20 C.F.R. § 416.908. The effects of all symptoms must be
 17 evaluated on the basis of a medically determinable impairment
 18 which can be shown to be the cause of the symptoms. 20 C.F.R. §
 19 416.929. Once medical evidence of an underlying impairment has
 20 been shown, medical findings are not required to support the
 21 alleged severity of symptoms. *Bunnell v. Sullivan*, 947, F. 2d
 22 341, 345 (9th Cr. 1991).

23 A treating physician's opinion is given special weight
 24 because of familiarity with the claimant and the claimant's
 25 physical condition. *Fair v. Bowen*, 885 F. 2d 597, 604-05 (9th
 26 Cir. 1989). However, the treating physician's opinion is not
 27 "necessarily conclusive as to either a physical condition or the
 28 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,

1 751 (9th Cir. 1989) (citations omitted). More weight is given to
 2 a treating physician than an examining physician. *Lester v.*
 3 *Cater*, 81 F.3d 821, 830 (9th Cir. 1996). Correspondingly, more
 4 weight is given to the opinions of treating and examining
 5 physicians than to nonexamining physicians. *Benecke v. Barnhart*,
 6 379 F. 3d 587, 592 (9th Cir. 2004). If the treating or examining
 7 physician's opinions are not contradicted, they can be rejected
 8 only with clear and convincing reasons. *Lester*, 81 F. 3d at 830.
 9 If contradicted, the ALJ may reject an opinion if he states
 10 specific, legitimate reasons that are supported by substantial
 11 evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44
 12 F. 3d 1435, 1463 (9th Cir. 1995).

13 In addition to the testimony of a nonexamining medical
 14 advisor, the ALJ must have other evidence to support a decision to
 15 reject the opinion of a treating physician, such as laboratory
 16 test results, contrary reports from examining physicians, and
 17 testimony from the claimant that was inconsistent with the
 18 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
 19 751-52 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
 20 Cir. 1995).

21 Plaintiff contends that the ALJ failed to properly credit
 22 treating physician Ron L. Crabtree, M.D.'s opinion that plaintiff
 23 was unemployable and met or equaled Listing 5.06 (inflammatory
 24 bowel disease). (Ct. Rec. 14 at 4, 6-9.) The ALJ gave little
 25 weight to Dr. Crabtree's opinion because: (1) in April of 2007,
 26 Dr. Crabtree expected plaintiff would be unemployable for a period
 27 of six months, not twelve as required by the Act; (2) plaintiff's
 28 Crohn's disease drastically improved with corticosteroid

1 treatment; and (3) Dr. Crabtree's opinion with respect to Listing
2 5.06 opinion is vague, unexplained, and insufficiently supported
3 by the evidence. (Tr. 13, 15.)

4 The ALJ is correct that Dr. Crabtree opined in April of 2007
5 he expected plaintiff would be unemployable for six months due to
6 pain and hyperesthesia of the lower extremities and a recent
7 (April 2007) hospitalization for pancreatitis. (Tr. 13, referring
8 to Exhibit 11F.) The ALJ notes that Dr. Crabtree was plaintiff's
9 treating physician for only a month when he made this assessment.
10 (Id, referring to Tr. 315, 317.)

11 The ALJ observes Dr. Crabtree opined after his initial
12 evaluation on March 22, 2007, that plaintiff's pain and skin
13 issues dramatically improve when using steroids to treat Crohn's
14 disease, a statement that appears to contradict his later opinion.
15 (Tr. 13, referring to Exhibit 11F.) The ALJ points out that after
16 this initial appointment, plaintiff failed to keep his next
17 appointment with Dr. Crabtree and with a scheduled dermatological
18 evaluation. (Tr. 14, referring to Exhibit 13F.) These are
19 specific and legitimate reasons for giving Dr. Crabtree's opinions
20 less weight.

21 With respect to the opinion of Dr. Crabtree and of Lori
22 Ksander, M.D., that plaintiff met or equaled Listing 5.06, the ALJ
23 stated:

24 Post hearing, the claimant submitted completed
25 forms from Ron L. Crabtree, M.D., and from Lori
26 Ksander, M.D., wherein each was asked to determine
27 whether the claimant had a medically determinable
28 impairment that met or equaled Listing 5.06
Inflammatory Bowel Disease (IBD)[fn omitted.](Exhibits
16F and 17F.) Although each doctor marked "5.06
Inflammatory Bowel Disease(IBD)" on the form requesting
their opinion of the claimant's medical condition, each

1 neglected to indicate which part was satisfied, A and/or
2 B, and failed to specify whether the claimant's
3 condition "met" or "medically" equaled the listing
4 despite both options being fully described in the form.

5 In addition, Dr. Crabtree indicated his medical
6 opinion was based on a "colon biopsy" and Dr. Ksander's
7 medical opinion was noted to be based on colonoscopies
8 and an esophagogastroduodenoscopy (EGD) allegedly
9 performed on or about April 14, 2007, which was not
10 submitted as evidence to the record. Essentially, the
11 forms confirmed the diagnosis of Crohn's disease but
12 failed to set forth the specific medical findings
13 statutorily necessary to meet or medically equal Listing
14 5.06. Although the opinions have been duly considered,
15 such are given little evidentiary weight as the implied
16 nature and severity of the claimant's Crohn's disease is
17 not well-supported by medically acceptable clinical and
18 laboratory diagnostic techniques and is inconsistent with
19 other substantial evidence in the record as discussed in
20 detail below.

21 (Tr. 15.)

22 The only objective evidence related to this issue is a CT of
23 small bowel exam dated April 3, 2007, which shows sigmoid colitis,
24 consistent with plaintiff's history of Crohn colitis, normal-
25 appearing bowel and small mesenteric lymph nodes medial to the
26 ascending colon, likely related to the patient's Crohn's disease.

27 (Tr. 356.) The ALJ notes treating physician Robert Ogburn, M.D.,
28 opined in March of 2007 plaintiff had a history of poor medical
29 compliance, including poor preparation for his December 2006
30 colonoscopy, failing to show up for a two week follow-up
31 appointment in January of 2007, failing to set appointments for a
32 small bowel series, and abruptly stopping taking prescribed
33 corticosteroid. When plaintiff asked Dr. Ogburn to change his
34 primary practitioner, he (Dr. Ogburn) recommended Dr. Crabtree.

35 (Tr. 13, referring to Exhibit 11F.)

36 Additionally, on November 22, 2006, seven months after onset,
37 plaintiff refused Dr. Ogburn's suggestion that he undergo a

1 colonoscopy. (Tr. 249.) As the ALJ notes, the record does not
2 contain the test results Drs. Crabtree and Ksander claim to rely
3 on when opining plaintiff meets Listing 5.06.

4 The ALJ properly rejected the opinion of Drs. Crabtree and
5 Ksander that plaintiff's impairments meet or equal Listing 5.06
6 because they are vague, unexplained, and, most importantly, not
7 supported by the requisite medical evidence.

8 The ALJ observes that Peter Bauer, M.D., was plaintiff's
9 primary care physician in January of 2006, three months before
10 onset. (Tr. 14, referring to Tr. 163-174.) Plaintiff complained of
11 pain returning in his fingers, recurring left shoulder pain, and
12 burning, swelling and painful feet. Dr. Bauer's examinations
13 showed loss of range of motion in the cervical spine, an intact
14 gait with no peripheral edema, and reduced ankle flexion. Dr.
15 Bauer assessed stable cervical disc degeneration, tendonitis of
16 the left subacromial joint and unchanged bilateral degenerative
17 joint disease of the ankles. (Tr. 168.) On January 25, 2006, Dr.
18 Bauer found plaintiff was capable of light exertion work and able
19 to perform his then current casino job. (Tr. 14, referring to Tr.
20 168-169.)

21 The ALJ notes that on July 11, 2006, Kenneth Jones, M.D., a
22 plastic surgeon, opined that a skin graft he performed on
23 plaintiff's ankles would result in no long-term disability. (Tr.
24 13, referring to Tr. 223.)

25 The ALJ considered the opinion of physician Feyi Ward, M.D.
26 (Tr. 21-22, referring to Exhibit 14F.) At the hearing,
27 plaintiff's counsel suggested obtaining the opinion of a medical
28 expert or sending plaintiff to a consultative evaluation to assess

1 his [plaintiff's] RFC. (Tr. 27.) After hearing the testimony, the
2 ALJ agreed. (Tr. 49.) On November 12, 2007, Dr. Ward reported
3 his findings after he reviewed plaintiff's records and performed
4 a consultative exam. (Tr. 377-382.)

5 The ALJ weighed Dr. Ward's diagnosis of controlled and stable
6 Crohn's diseases with associated pyoderma gangrenosum, neuropathic
7 left foot pain treated with adequate pain medications, and chronic
8 neck pain "resulting in the ability to work at occupations not
9 requiring prolonged standing and walking." (Tr. 22.) Plaintiff
10 was noted to have no limitation in his use of his hands based on
11 testing showing the right hand fine dexterity to be normal, as
12 well as normal upper extremity strength and range of motion. (Tr.
13 22, referring to Exhibit 14F.)

14 To further aid in weighing the conflicting medical evidence,
15 the ALJ evaluated plaintiff's credibility and found him less than
16 fully credible. (Tr. 19.) Credibility determinations bear on
17 evaluations of medical evidence when an ALJ is presented with
18 conflicting medical opinions or inconsistency between a claimant's
19 subjective complaints and diagnosed condition. See *Webb v.*
20 *Barnhart*, 433 F. 3d 683, 688 (9th Cir. 2005).

21 It is the province of the ALJ to make credibility
22 determinations. *Andrews v. Shalala*, 53 F. 3d 1035, 1039 (9th Cir.
23 1995). However, the ALJ's findings must be supported by specific
24 cogent reasons. *Rashad v. Sullivan*, 903 F. 2d 1229, 1231 (9th
25 Cir. 1990). Once the claimant produces medical evidence of an
26 underlying medical impairment, the ALJ may not discredit testimony
27 as to the severity of an impairment because it is unsupported by
28 medical evidence. *Reddick v. Chater*, 157 F. 3d 715, 722 (9th Cir.

1 1998). Absent affirmative evidence of malingering, the ALJ's
 2 reasons for rejecting the claimant's testimony must be "clear and
 3 convincing." *Lester v. Chater*, 81 F. 3d 821, 834 (9th Cir. 1995).
 4 "General findings are insufficient: rather the ALJ must identify
 5 what testimony not credible and what evidence undermines the
 6 claimant's complaints." *Lester*, 81 F. 3d at 834; *Dodrill v.*
 7 *Shalala*, 12 F. 3d 915, 918 (9th Cir. 1993).

8 The ALJ relied on several factors when he assessed
 9 credibility: objective medical findings do not support the degree
 10 of impairment claimed; inconsistent statements; failure to follow
 11 recommended courses of treatment, and activities inconsistent with
 12 the degree of impairment alleged. (Tr. 19-22.)

13 The ALJ's reasons are clear, convincing, and supported by
 14 substantial evidence. A claimed impairment unsupported by
 15 objective evidence noted by the ALJ is plaintiff's testimony that
 16 he has difficulty maintaining his grasp of objects (Tr. 38-39)
 17 including cups, pens, and, in his last position as a card dealer,
 18 cards. (Tr. 21.) This claim is unsubstantiated by plaintiff's
 19 chart notes, which do not indicate any upper extremity weakness or
 20 confirmation of severe bilateral hand numbness or pain. And, the
 21 ALJ points out, the complaint is not supported by the results of
 22 Dr. Ward's testing. (Tr. 21.)

23 Plaintiff stated he was prescribed a cane (Tr. 105) and
 24 testified a cane was never prescribed. (Tr. 35.) The ALJ notes
 25 plaintiff testified he has constant foot pain and swelling
 26 "inhibiting his ability to stand and walk and requiring him to
 27 elevate his feet most of the day," yet

28 [T]he record shows that during the relevant time
 period the claimant's lower extremities were noted

1 to have no edema or only slight swelling and there
 2 are no recommendations the claimant was to stay off
 3 his feet or elevate his feet except for the two weeks
 following his ankle debridements in May 2006.

4 (Tr. 19.)

5 The ALJ notes plaintiff failed to follow through with
 6 recommended treatment by missing several medical appointments,
 7 failing to show for a scheduled small bowel CT series, refusing to
 8 stay an additional night in the hospital to have a colonoscopy the
 9 next day, and being described by his gastroenterologist as having
 10 poor medical compliance. (Tr. 20.) As the ALJ points out, if
 11 plaintiff's conditions were as severe as alleged, it is unlikely
 12 he would miss medical appointments and fail to follow recommended
 13 treatment. (Id.)

14 Plaintiff's activities include living alone and caring for
 15 all household chores, visiting with friends, driving, shopping,
 16 and in good weather putting at a golf course for 20 to 30 minutes.
 17 (Tr. 20, 142.)

18 The ALJ's reasons for finding plaintiff less than fully
 19 credible are clear, convincing, and fully supported by the record.
 20 See *Thomas v. Barnhart*, 278 F. 3d 947, 958-959 (9th Cir.
 21 2002) (proper factors include inconsistencies in plaintiff's
 22 statements, inconsistencies between statements and conduct, and
 23 extent of daily activities). Noncompliance with medical care or
 24 unexplained or inadequately explained reasons for failing to seek
 25 medical treatment also cast doubt on a claimant's subjective
 26 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.
 27 2d 597, 603 (9th Cir. 1989).

28 To the extent the ALJ rejected the contradicted opinions of
 Drs. Crabtree and Ksander, his reasons are legitimate, specific,
 ORDER GRANTING DEFENDANT'S MOTION
 FOR SUMMARY JUDGMENT

1 and supported by substantial evidence in the record. See *Lester*
 2 v. *Chater*, 81 F. 3d 821, 830-831 (9th Cir. 1995)(holding that the
 3 ALJ must make findings setting forth specific, legitimate reasons
 4 for rejecting the treating physician's contradicted opinion).

5 The ALJ is responsible for reviewing the evidence and
 6 resolving conflicts or ambiguities in testimony. *Magallanes v.*
 7 *Bowen*, 881 F. 2d 747, 751 (9th Cir. 1989). It is the role of the
 8 trier of fact, not this court, to resolve conflicts in evidence.
 9 *Richardson*, 402 U.S. at 400. The court has a limited role in
 10 determining whether the ALJ's decision is supported by substantial
 11 evidence and may not substitute its own judgment for that of the
 12 ALJ, even if it might justifiably have reached a different result
 13 upon de novo review. 42 U.S.C. § 405 (g).

14 There is no error in the ALJ's assessment of the evidence.

15 **B. Ability to perform past relevant work**

16 Plaintiff alleges the ALJ erred by finding he can perform his
 17 past work as a card dealer because Dr. Ward's opinions do not
 18 support the conclusion. (Ct. Rec. 14 at 5.) The Commissioner
 19 responds that this is an issue left to the ALJ. (Ct. Rec. 17 at
 20 16-17.)

21 The Commissioner is correct. Dr. Ward gave an opinion as to
 22 plaintiff's RFC. The RFC assessed by the ALJ is consistent with
 23 Dr. Ward's. The VE opined that a person with plaintiff's RFC and
 24 background could perform his past relevant work as a card dealer.
 25 Plaintiff fails to meet his burden at step four of establishing
 26 that he is unable to perform his past relevant work. The ALJ's
 27 step four determination is without error and supported by the
 28 record.

The ALJ's assessment of the medical evidence, plaintiff's credibility, and step four determination is supported by the record and free of legal error.

CONCLUSION

Having reviewed the record and the ALJ's conclusions, this court finds that the ALJ's decision is free of legal error and supported by substantial evidence..

IT IS ORDERED:

1. Defendant's Motion for Summary Judgment (**Ct. Rec. 16**) is
GRANTED.

2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is
DENIED.

The District Court Executive is directed to file this Order, provide copies to counsel for Plaintiff and Defendant, enter judgment in favor of Defendant, and **CLOSE** this file.

DATED this 30th day of March, 2009.

s/ James P. Hutton
JAMES P. HUTTON
UNITED STATES MAGISTRATE JUDGE